IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

CRP.No. 298 of 2007()

AGAINST THE ORDER DATED 29/06/2006 IN IA 2165/2004 IN OS.375/2003 of PRL.M.C.,KANNUR

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REVISION PETITIONER: RESPONDENT/PLAINTIFF:

N.NARAYANAN, S/O THAMBAI ACHARI,
AGED 46 YEARS, RESIDING AT UMA NILAYAM,
P.O.PATTANNUR, MATTANNUR , KANNUR
REPRESENTED BY POWER OF ATTORNEY HOLDER
ASHARIKANDI PADMANABHAN, S/O THAMBAI,
ASHARIKANDI HOUSE, KANHIRODE, KANNUR.

BY ADV. SMT.K.K.CHANDRALEKHA
SRI.SUDHEESH THAROL

RESPONDENT: PETITIONER:

N.C.DIVYAN,(INSANE), AGED 43 YEARS,
THROUGH GUARDIAN AND NEXT FRIEND A.P.GEETHA,
W/O DIVYAN, AGED 35 YEARS, RESIDING AT
SAI NIVAS, PANNIYANPARA, KANNUR.

BY ADV. SRI.V.RAJAGOPAL

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

M.N. KRISHNAN, J.

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C.R.P. NO. 298 OF 2007

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Dated this the 3rd day of December, 2007.

O R D E R

This revision petition is preferred against the order of the Munsiff, Kannur in I.A.2165/04 in O.S.375/03 whereby the learned Munsiff found that it was a fit case to appoint the wife of N.C. Divyan as the next friend to prosecute the case. The suit was one for realisation of an amount and the defendant in the suit had suffered an exparte decree. It is contended that the defendant is incapable of representing himself and thereafter through the guardian namely the wife an application is filed to set aside the exparte decree. It is submitted that in the suit he was represented by a counsel and had filed a written statement and the counsel has been examined and he had submitted that the said Divyan had executed a vakkalath in his presence. Now, the question to be determined is whether he is able to look after himself in the proceedings which is pending before the Court for the time being namely to set aside the exparte decree. Two doctors had treated him one is Dr.V.V.Mohanachandran and

the other doctor is K.P.V. Narayanan. This K.P.V. Narayanan has not been examined in this case and he deals with the treatment of the person during the period 2005. The other Doctor PW1 had treated him and issued Ext.A1 certificate on 14.6.04. The Doctor would depose that this Divyan may be having lucid intervals and he is not a chronic mania patient. The Court also has observed that the said Divyan was capable of giving rational answers to the question put by the Court. Taking into account the medical records into consideration the Court felt that he could look after himself. As far as this case is concerned at this stage what has to be considered is whether the defendant is able to defend his case in the application which is filed for setting aside the exparte decree. So, it is a current state of affairs that has to be gone into. Since the Court has opined that he is capable of giving rational answers one cannot jump to the conclusion that he is a mania patient. Therefore, in a case of this nature some medical evidence showing the present state of affairs is also relevant. Therefore, for the said purpose it is desirable that

Sri. N.C. Divyan is referred to an expert psychiatrist for examination and on issuance of a certificate and after examining the doctor and permitting the parties to adduce evidence in this regard which they want to adduce, the Court may take a fresh decision and the Court may also put relevant questions to Divyan to understand his state of mind on the date of examination. Thereafter the Court may take a decision and proceed further with the matter. Therefore, the order under challenge is set aside and the matter is remitted back to the Court below for fresh consideration as stated in the previous paragraphs. Parties are directed to appear before the Court below on 7.1.2008.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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